

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CURTIS LEE WATSON,

Plaintiff,

vs.

No. CIV 00-54 JP/LCS

**CORRECTIONS CORPORATION OF
AMERICA and EVERCOM
TELECOMMUNICATIONS SYSTEMS, INC.**

Defendants.

**MAGISTRATE JUDGE’S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court upon Plaintiff’s motion “Pursuant to Rule 23 Civil Procedure” for class certification, filed June 26, 2000 (*Doc. 26*). The Court has reviewed the motion and recommends that it be denied.

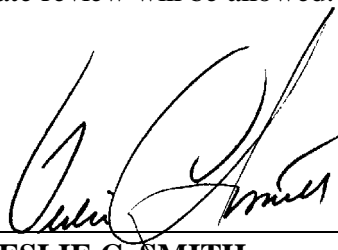
Plaintiff, an inmate of Torrance County Detention Center, is proceeding *pro se* and *in forma pauperis* in this action. Plaintiff seeks to represent a class consisting of all District of Columbia inmates residing at the facility. The Tenth Circuit has held that a *pro se* plaintiff cannot adequately represent a putative class under Rule 23(a)(4) of the Federal Rules of Civil Procedure. *See Fymbo v. State Farm Fire & Casualty Co.*, ___ F.3d ___, 2000 WL 719435 (10th Cir. June 5, 2000). It is plain error to permit an imprisoned litigant to represent fellow inmates in a class action without the assistance of counsel. *See Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975). I propose finding that Plaintiff, as an incarcerated *pro se* litigant, cannot adequately

represent the class.

Plaintiff states that he wishes class certification at this time so that other putative class members can assist him in paying the costs. Plaintiff should move for leave to amend his complaint to include these individuals as plaintiffs if they wish to join him in bringing this litigation.

Recommended Disposition

I recommend that Plaintiff's motion to certify class, filed June 26, 2000 (*Doc. 26*), be DENIED. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

LESLIE C. SMITH
United States Magistrate Judge